

FILED

NOV 18 2019

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

SC ADMIN. LAW COURT

Kristiane M. Shirer,

Docket No. 19-ALJ-17-0016-CC

Petitioner,

vs.

Calhoun County Assessor,

Respondent.

RECEIVED

ORDER DENYING MOTION
TO RECONSIDER

DEC 17 2019

SC Court of Appeals

This case comes before the South Carolina Administrative Law Court (ALC) pursuant to the Calhoun County Assessor's (Respondent) Motion to Reconsider the order granting Kristiane M. Shirer's (Petitioner) request for the four percent special assessment ratio for the previous tax years beginning in 2015. The Court issued its Final Order October 10, 2019, after a hearing on the merits, held on September 18, 2019. Respondent's motion was filed on October 25, 2019. Petitioner has not responded.

In its motion, Respondent concedes that the findings of fact contained in the Final Order are accurate. These include findings that the additional dwelling has been used exclusively by Petitioner, her spouse, and visiting members of Petitioner's immediate family. Respondent claims that the "additional dwelling" is not the legal residence of Petitioner or "any immediate family members" of Petitioner and, therefore, cannot meet the requirements of S.C. Code Ann. § 12-43-220(c) (2014 & Supp. 2018) which provides for a four percent special assessment in certain limited circumstances.

Section 12-43-220(c) allows a four percent special assessment ratio to apply to an individual's legal residence and not more than five contiguous acres, owned and occupied by the owner of the interest, and to "additional dwellings located on the same property and occupied by immediate family members of the owner."

Respondent concedes that the additional dwelling has not been rented or otherwise used for commercial purposes. However, Respondent argues that the statute **requires** that a family member reside in the additional dwelling and that the additional dwelling is not Petitioner's legal residence (emphasis added).

The four percent special assessment ratio, according to the plain terms of the statute, applies to the legal residence, not more than five contiguous acres, and **additional** dwellings located on the same property (emphasis added). These dwellings are in addition to the legal residence but subject to the same tax exemption. While the statute limits the use of these dwellings to immediate family members, it does not require an additional dwelling to be continuously occupied by the same immediate family members. In this case, the Petitioner, her spouse, her children, and grandchildren have been the sole, but not continuous, occupants. Likewise, the legal residence is not continuously occupied by Petitioner. Petitioner and her spouse spend time in the additional dwelling, and, according to her testimony, own and occupy other dwellings on properties in other locations where they are subject to the standard 6% assessment ratio.

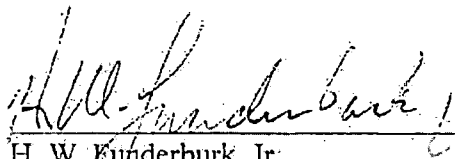
The Court agrees with Respondent that should the dwelling in question be rented or otherwise used commercially or for other than Petitioner's immediate family, the four percent special assessment ratio should be denied. See *Ford v. Beaufort County Assessor*, 398 S.C. 508, 512, 730 S.E.2d 335, 338 (Ct. App. 2012). In *Ford*, the Court upheld the ALC's interpretation of section 12-43-220(c) to mean that the four-percent ratio generally would not be applied to an owner-occupied legal residence if that residence is rented for profit during the applicable tax year.

In this case, the additional dwelling is only used by Petitioner and her spouse and/or when Petitioner's family members visit. It has not been rented out or used for any disqualifying purpose. It is therefore,

ORDERED that Respondent's Motion to Reconsider is **DENIED**.

AND IT IS SO ORDERED.

November 18, 2019
Columbia, South Carolina



H. W. Funderburk, Jr.
Administrative Law Judge

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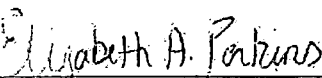
CERTIFICATE OF SERVICE

I, Elizabeth A. Perkins, hereby certify that I have this date served this **Order Denying Motion to Reconsider** upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

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November 18, 2019
Columbia, South Carolina



Elizabeth A. Perkins
Judicial Law Clerk